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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ANGEL SANCHEZ,

Defendant and Appellant.

A152088

(City & County of San Francisco
Super. Ct. No. SCN226800)

A jury convicted Angel Sanchez of felony vandalism and misdemeanor assault. He challenges the trial court's refusal to reduce his vandalism conviction to a misdemeanor. We affirm.

BACKGROUND

Around 11:00 a.m. on July 20, 2016, Emmanuel S.¹ was driving on Bayshore Boulevard when he saw a Toyota Camry and a Mustang stopped in the road in front of him, blocking traffic. The Camry was in front of Emmanuel's car and the Mustang was to its right in the adjacent lane. The drivers were talking to each other. The cars started moving after Emmanuel and other motorists honked their horns, but they stopped again on the next block with the Camry directly in front of Emmanuel's car and the Mustang on his right. The Mustang's driver, later identified as Sanchez, was yelling and waving what was later identified as a BB gun.

¹ We will refer to the victim by his first name in the interest of privacy. We intend no disrespect by this practice.

The Camry's driver stepped out of his car, walked up to Emmanuel's car, opened the driver side door and grabbed Emmanuel's phone from his lap. At the same time, Sanchez ran up to Emmanuel's car and smashed its right sideview mirror with his fist. Sanchez then opened the passenger side door, leaned into the car, brandished his gun and demanded Emmanuel's wallet. As Emmanuel attempted to comply Sanchez struck him in the face, took the wallet and ran back to his car. Emmanuel suffered a cut on his face that bled heavily and left an inch-long scar below his right eye.

Sanchez was charged with robbery, assault with force likely to cause great bodily injury, and felony vandalism. The jury convicted him of vandalism and the lesser included offense of simple assault but hung on the robbery charge, which was dismissed. The court denied a defense motion to reduce the vandalism conviction to a misdemeanor, stayed imposition of sentence, and placed Sanchez on probation for three years subject to conditions including one year in county jail. This appeal is timely.

DISCUSSION

Sanchez contends the court's refusal to reduce his felony vandalism conviction to a misdemeanor was an abuse of discretion. The contention is meritless.

The decision whether to reduce such a "wobbler" from a felony to a misdemeanor under Penal Code section 17, subdivision (b) rests in the sound discretion of the sentencing court. (*People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 977.) On appeal, "[t]he burden is on the party attacking the sentence to clearly show that the sentencing decision was irrational or arbitrary. [Citation.] In the absence of such a showing, the trial court is presumed to have acted to achieve legitimate sentencing objectives, and its discretionary determination to impose a particular sentence will not be set aside on review." [Citation.] Concomitantly, "[a] decision will not be reversed merely because reasonable people might disagree. 'An appellate tribunal is neither authorized nor warranted in substituting its judgment for the judgment of the trial judge.'" [Citations.]' [Citation.]" (*Id.* at pp. 977-978.)

In determining whether to reduce a felony to a misdemeanor, the court should consider factors such as "the nature and circumstances of the offense, the defendant's

appreciation of and attitude toward the offense, or his traits of character as evidenced by his behavior and demeanor at the trial.’ [Citations.] When appropriate, judges should also consider the general objectives of sentencing such as those set forth in California Rules of Court, [former] rule 410,” including protecting society, punishing the defendant, deterring him from further offenses and deterring others from criminal conduct. (*People v. Superior Court (Alvarez)*, *supra*, 14 Cal.4th at p. 978, fn. omitted.)

The court did not abuse its discretion. When it addressed the circumstances of the offense, it observed: “I don’t think this is misdemeanor conduct, considering all of the defendant’s actions and the circumstances of this vandalism and fairly significant physical assaults that were committed on [Emmanuel], who was effectively trapped in his car by the defendant and his former co-defendant, Mr. Rosas. [¶] I also think a misdemeanor is inappropriate given that this occurred while he was on a prior grant of felony probation So in my view, misdemeanor vandalism is something like, you know, spray painting somebody’s front door because they were your loud neighbor or something like that.” Moreover, Sanchez decided to turn around and assault Emmanuel after he had finished vandalizing his car and walked away.

The court also considered the objectives of rehabilitation and protecting society. Although it rejected the prosecution’s request for the maximum term in favor of probation, it noted: “this is really a borderline case for another grant of probation, given the history of what I reviewed in the docket on the hold grant, meaning the failure to report to APD at all, multiple arrests, and failure to follow through with the required programming.” In light of the amount of time Sanchez had already spent in custody, the court reasoned that three years of formal probation under intense supervision with the Transitional Age Youth unit would provide Sanchez with significantly more supervised time, and thus be more beneficial for him and the public, than a shorter period of incarceration. Under these circumstances, its decision not to reduce the vandalism conviction to a misdemeanor was well within its discretion.

DISPOSITION

The judgment is affirmed.

Siggins, P.J.

WE CONCUR:

Fujisaki, J.

Petrou, J.

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